

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT (#FCU-10-15)
JUDY BEECHER
SEPTEMBER 20, 2010

A report to the Flathead County Board of Adjustment regarding a request by Judy Beecher for a conditional use permit to allow for a family hardship dwelling in the Blanchard Lake zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on October 5, 2010 beginning at 6:00 PM in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed land use is not within the advisory jurisdiction of a specific local land use advisory committee.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on October 5, 2010 beginning at 6:00 PM in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

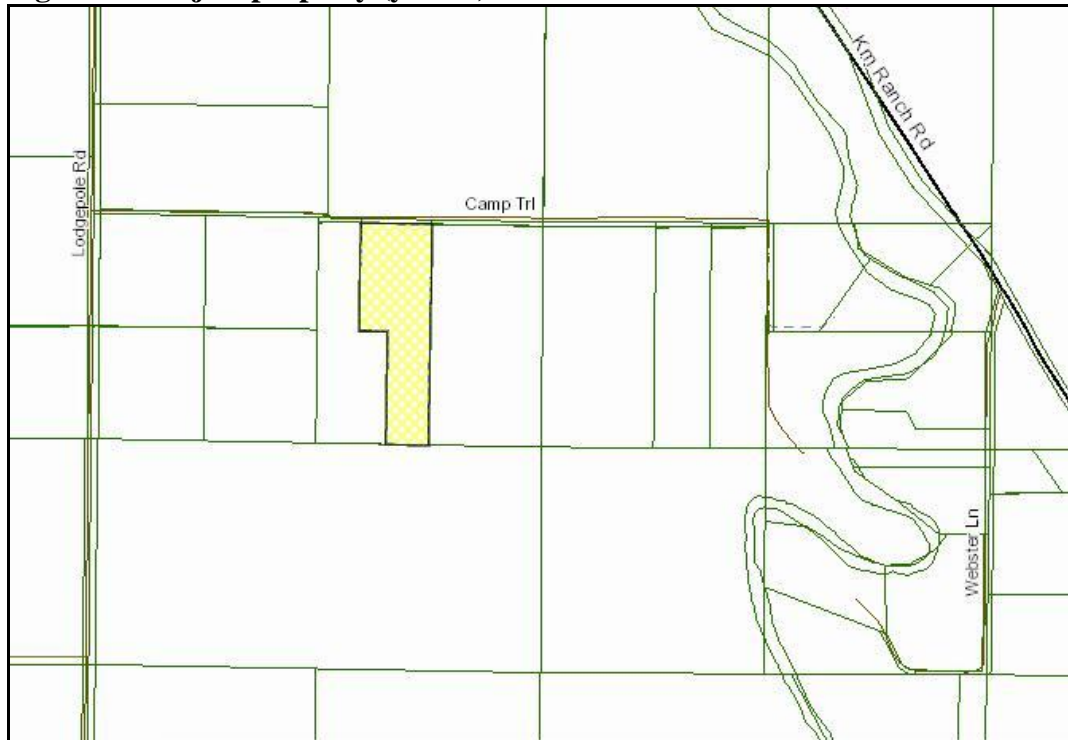
Judy Beecher
701 Lodgepole Road
Whitefish, MT 59937
(406) 862-6846

Ron & Amy Donsbach
701 Lodgepole Road
Whitefish, MT 59937
(406) 253-0567; (406) 253-1820
tbrook33@yahoo.com

B. Property Location and Size

The subject property is located southwest of Whitefish at 264 Camp Trail, east of Lodgepole Road. The property is approximately 10 acres, and is legally described as Tract 6A in Section 8, Township 30 North, Range 22 West. The subject property is shown in the figure below.

Figure 1: Subject property (yellow)



C. Existing Land Use(s) and Zoning

The property is located within the Blanchard Lake Zoning District and is currently zoned AG-40, depicted in Figure 2 below. There is an existing single family dwelling located on the property. Figure 3 shows the existing land use using the available 2009 aerial photography.

Figure 2: Subject property (yellow)



Figure 3: Aerial of subject property, outlined in red.



D. Adjacent Land Use(s) and Zoning

Adjacent land surrounding the subject property is zoned AG-40. To the west, across Lodgepole Road, property is zoned SAG-10. The character of the surrounding area is rural residential with uses mixed between residential and agricultural.

E. Summary of Request

The applicant is requesting a conditional use permit to allow for a family hardship dwelling on the property. A family hardship dwelling is normally processed as an *administrative* conditional use permit within the AG-40 zoning. However, during the required adjacent property notification for the administrative conditional use permit, a large number of public comments were received concerning the proposed use on the subject property. The administrative conditional use permit application was switched to a regular conditional use permit application pursuant to Section 2.06.045(5) of the Flathead County Zoning Regulations (FCZR). Additional referrals were sent during the conditional use permit process to agencies potentially involved based on the public comments submitted.

The applicant is requesting a family hardship dwelling be placed on the subject property to allow her daughter to watch over and care for her. Family hardship dwelling is defined as “*a temporary dwelling used for housing a member of the immediate family whose physical or mental condition requires constant care or assistance.*” The applicant is requesting the existing single family residence be considered the family hardship dwelling, and a second residence be constructed. Once the family hardship dwelling is no longer needed, the applicants have stated the currently existing structure will be destroyed.

F. Compliance With Public Notice Requirements

Notification was mailed to property owners within 150 feet of the subject property on September 14, 2010. Legal notice of the public hearing on this application will be published in the September 19, 2010 edition of the Daily Interlake.

G. Agency Referrals

Referrals were sent to the following agencies on September 3, 2010:

- Flathead County Public Works/Road Department-Dave Prunty
 - Reason: The proposal has the potential to impact County facilities.
- Flathead County Solid Waste-Jim Chilton
 - Reason: The proposal has the potential to impact County facilities.
- Flathead City-County Health Department-Glen Gray/Joe Russell
 - Reason: The applicant’s have stated they are proposing an additional septic system.

Additional agency referrals were sent on September 10, 2010 to the following:

- Montana Department of Transportation, Missoula-Jean Crow
 - Reason: Comment returned from the Flathead County Road Department indicated Lodgepole Road was a state secondary.

- Montana Department of Transportation, Kalispell-James Freyholtz
 - Reason: Comment returned from the Flathead County Road Department indicated Lodgepole Road was a state secondary.

III. COMMENTS RECEIVED

A. Public Comments

Notification was mailed to property owners within 150 feet of the subject property on September 14, 2010. Legal notice of the public hearing on this application was published in the September 19, 2010 edition of the Daily Interlake. At this time, no public comments have been received. Any comments received after this report is sent to the Board will be presented and summarized verbally by staff at the hearing.

B. Agency Comments

Below is a list of comments received from the requested agencies. Any comments received after this report is sent to the Board will be presented and summarized verbally by staff at the hearing.

- Flathead County Public Works/Road Department-Dave Prunty
 - Comment: After reviewing the application, it is on Lodgepole Road which is a state secondary. Staff should contact MDOT for any conditions they might have. At this time the Road Department does not have any comments.
- Montana Department of Transportation-James Freyholtz
 - Comment: The proposal is accessed via Camp Trail. No comment regarding the proposal.
- Flathead County Solid Waste-Jim Chilton
 - Comment: The Solid Waste District views no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by a private hauler. Evergreen Disposal is the licensed hauler in the area.
- Flathead City-County Health Department-Glen Gray
 - Comment: The tract was created in 1985 and was reviewed under the Sanitation in Subdivisions Act. An approval was given for one single family dwelling on each of the 2 parcels on the COS along with an approval for an existing shared (2 user) water supply. In order for this office to issues an septic system permit for another dwelling, the parcel would have to again be reviewed under the Sanitation in Subdivisions Act, which will require another drainfield and water supply. The existing water supply must either be reviewed as a multiple user system (3-9 users) or a new well must be drilled. A consultant must be retained to prepare the application for review.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

A. Site Suitability

i. Adequate usable space

The subject property totals approximately 10 acres. There is an existing single family residence located near the middle of the property. This is the residence the applicants propose to be the family hardship dwelling. The second residence would be placed to the east of the existing residence, and slightly to the north. The property does appear to contain adequate usable space for the family hardship dwelling. The proposed structure must comply with the AG-40 zoning setback requirements for principal structures which are 20 feet from all property lines and road easements. Section 4.11 of the FCZR also lists performance standards for family hardship dwellings. Family hardship dwellings are defined in the FCZR under Section 7.05.110 as *“a temporary dwelling used for housing a member of the immediate family whose physical or mental condition requires constant care or assistance.”* Therefore the dwelling may not be rented or leased, is considered only temporary, and must be removed from the property once it is no longer required.

Finding #1- The subject property contains adequate usable space because there is a total of 10 acres, the additional dwelling will be located near the middle of the property, the dwelling will meet applicable setbacks, and the temporary use will be removed in compliance with the definition of family hardship dwelling.

ii. Adequate access

The subject property is located Camp Trail, which is a privately maintained road. Camp Trail is located off Lodgepole Road which is paved and maintained by the Montana Department of Transportation. Camp Trail is a gravel road, with a travel surface at least 14 feet wide. It is shown as a 25 foot wide private road and utility easement on surrounding Certificates of Survey. The current residence shares a driveway off Camp Trail with an adjacent property. The applicants are proposing a new driveway for the second residence. However, since Camp Trail is privately maintained, the applicants do not require an approach permit from the Flathead County Road and Bridge Department.

Finding #2- There is adequate access for the proposed use because the subject property is located off of a private road which accesses Lodgepole Road, maintained by the Montana Department of Transportation.

iii. Absence of environmental constraints

The elevation of the subject property is relatively flat with no significant elevation changes occurring. The existing structure, which the applicant would like to consider as the family hardship dwelling, is located near the middle of the property. The proposed residence would be located within the front half of the property. The USGS Topography map for the area shows Tobie Creek flows through the rear area of the property. However, this water feature does not appear on the FEMA FIRM Panel 30029C 1385G as a floodplain issue.

Therefore the property is not located within the 100-year floodplain, which is regulated by Flathead County. The site does not contain any other areas depicted as wetland vegetation.

Finding #3- The proposed dwelling will not impact the environment because the portion of the subject property to be utilized does not contain any areas with steep slopes, wetlands, or floodplains.

B. Appropriateness of design

i. Parking scheme

There appears to be adequate space for any necessary parking. Chapter 6 of the FCZR lists parking requirements for specific uses. Section 6.02.010 requires 2 parking spaces per dwelling unit for a single-family home. Therefore, 2 parking spaces will be required for the proposed dwelling in addition to the current parking spaces used for the existing residence.

Finding #4- There is adequate parking for the proposed use because 2 additional parking spaces will be provided for the additional structure based on the residential parking requirements of the Flathead County Zoning Regulations.

ii. Traffic circulation

The subject property is accessed by an existing residential driveway located off a privately maintained road. The private road, Camp Trail, is accessed from Lodgepole Road which is a state secondary. The private road continues past the subject property for approximately ½ mile before splitting into private driveways. There does appear to be adequate space at the end of Camp Trail for vehicles to turn around where the road dead-ends. There is also adequate space for vehicles to turn around within the subject property.

Finding #5- Traffic circulation is satisfactory because the subject property is accessed by a private gravel road, which intersects a paved Montana state secondary, and there is adequate space for vehicles to turn around at the end of the private road or within the boundaries of the subject property.

iii. Open space

The AG-40 zoning lists permitted lot coverage of 20% in Section 3.05.040 of the FCZR. As the property contains a total of 10 acres, the permitted lot coverage allowed would equal approximately 2 acres. Currently the property only contains one single family residence. It appears the property contains adequate open space to meet the permitted lot coverage and to accommodate any on-site stormwater runoff, with the inclusion of the additional proposed residence.

Finding #6- There is adequate open space for the proposed use because the applicant can meet the permitted lot coverage allowed for the AG-40 zoning, as the property consists of approximately 10 acres.

iv. Fencing/screening

There is existing wooden fencing separating the subject property from the adjacent property to the east. The applicant is not proposing any additional fencing with this request. If the applicant wishes to construct fencing in the future, it must comply with Section 5.04 of the FCZR performance standards regarding fences. Additionally, the AG-40 zoning does not list a maximum fence height.

v. Landscaping

The property is forested towards the rear of the property. There are some existing mature trees located near the current residence, as well as along the front property boundary. The applicant does not propose any additional landscaping other than for residential purposes.

vi. Signage

The applicant is not proposing any signage other than normal residential signage which is exempt under Section 5.11.010(2) of the FCZR. In the future, if the applicant wished to erect any non-residential signage, it would be required to comply with Section 5.11 of the FCZR.

Finding #7- The proposed dwelling is not anticipated to impact surrounding properties because there is an existing wooden fencing located on the subject property, the property is currently forested with mature trees, and no signage is proposed other than normal residential signage.

vii. Lighting

The applicant has stated all outdoor lighting will be kept to a minimum. Any proposed lighting must comply with Section 5.12 of the FCZR.

Finding #8- The proposed lighting is acceptable because all lighting shall comply with the residential lighting requirements located in the Flathead County Zoning Regulations.

C. Availability of Public Services and Facilities

i. Sewer

The property currently uses a septic system approved by the Flathead County Department of Environmental Health for one single family dwelling under permit #82-6987. Comment received from the Department on September 20, 2010 indicates the property must be reviewed again under the Sanitation in Subdivisions Act for another dwelling, which would require another drainfield and water supply. Performance standards for family hardship dwellings listed under Section 4.11 of the FCZR state the structure must be connected to an

approved utility and septic system. As a condition of approval, the applicant must contact the Flathead County Department of Environmental Health to obtain a new septic approval which can accommodate the proposed added use.

ii. Water

Comment submitted from the Flathead County Department of Environmental Health on September 20, 2010 indicates the property is currently approved for an existing shared (2 user) water supply with the adjacent tract. Therefore, the existing water supply must either be reviewed as a multiple user system (3-9 users), or a new well must be drilled. Performance standards for family hardship dwellings listed in Section 4.11 of the FCZR also require the structure be connected to an approved utility system. The applicant shall contact the Flathead County Department of Environmental Health for any review process regarding the well serving multiple residences.

iii. Storm Water Drainage

The applicant has not submitted any information regarding additional stormwater management systems besides what is already used for the residential property. The stormwater drainage system would also be reviewed by the Flathead County Department of Environmental Health. As a condition of approval, the applicant shall contact the Environmental Health office to determine if any additional information is required.

Finding #9- The subject property must be re-reviewed for sewer, water, and stormwater drainage under the Sanitation in Subdivision Act for the proposed family hardship dwelling because comment was received from the Flathead County Department of Environmental Health indicating the property is currently approved for only one single family dwelling, the existing water supply must either be reviewed as a multiple user system or a new well must be drilled, and performance standards listed in Section 4.11 of the Flathead County Zoning Regulations state the structure must be connected to an approved septic system.

iv. Fire Protection

Fire protection would be provided by the Whitefish Rural Fire District. No significant impact to the District is anticipated as a result of the proposed use because the district is already equipped to handle the addition of a residential structure.

v. Police Protection

The property would be served by the Flathead County Sheriff's Department. There is no significant impact anticipated to the Department as a result of the proposed use because the department is already equipped to address the needs of one additional residential structure.

Finding #10- The proposed use is not anticipated to impact public services as fire and police protection are available to the subject property, and the departments are equipped to handle the addition of one residential structure.

vi. Streets

The subject property is located on Camp Trail which is a privately maintained gravel road. Since the road is not maintained by Flathead County, the applicant is not required to obtain an approach permit from the Flathead County Road Department. Camp Trail has a travel surface at least 14 feet wide, and is located within a 25 foot wide private road easement. Camp Trail connects to Lodgepole Road which is a state secondary road maintained by the Montana Department of Transportation.

Staff researched if any Road User's Agreement existed for the private road, Camp Trail. According to staff in the Flathead County Clerk and Recorder's Office, there is no recorded Road User's Agreement connected to the subject property. However, staff indicated the Clerk and Recorder's records only go back as far as 1984. Therefore, if one existed prior to 1984, it would not be on record with Flathead County. The 25 foot road easement is shown on Certificate of Survey #8119. Since staff has not been able to uncover any recorded Road User's Agreement and the applicant has not been able to provide one as well, it could be assumed there is not a recorded agreement in place for Camp Trail.

Finding #11- The subject property has adequate access for the proposed use because it is located on a privately maintained gravel road accessed from a Montana state secondary, the private road is located within a 25 foot wide easement, and the temporary addition of 1 single family dwelling would not violate any road user's agreement as staff was not able to establish the existence of any maintenance documents.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

There are no traffic counts for Camp Trail because it is a privately maintained road. The Flathead County Road Department does not have traffic counts for Lodgepole Road because it is a Montana state secondary road. Staff emailed Jean Crow and James Freyholtz with the Montana Department of Transportation to determine if there would be any impact from the proposed use on Lodgepole Road. At the time of writing the staff report, no comment had been submitted by Jean Crow. James Freyholtz's response only stated the proposal is accessed via Camp Trail, and submitted "no comment" regarding the proposal. Residential structures are estimated to contribute up to 10 vehicle trips per day, as projected by the Institute of Transportation Engineers Trip Generation, 5th Edition. Therefore the proposed use would add an additional 10 trips per day and 70 trips per week to what already exists. Based on the number of properties located along Camp Trail, the additional 10 trips per day are not anticipated to have a negative impact on the road and surrounding property owners.

Finding #12- It is not anticipated that the proposed use would have a negative impact on the road and surrounding properties because the number of vehicle trips per day would only increase by 10 trips.

ii. Noise or vibration

The proposed use is a residential family hardship dwelling. It is not anticipated that the proposed use will generate any excessive noise or vibration above what is acceptable and normal for residential use.

iii. Dust, glare or heat

The proposed family hardship dwelling is not anticipated to produce any excessive glare or heat. Since the private road which accesses the property is gravel, there is the possibility for increased dust. However, it is not anticipated to be a problem beyond what is acceptable for a private gravel road.

iv. Smoke, fumes, gas, or odors

No smoke, fumes, or other odors are anticipated other than what is acceptable for normal residential use.

Finding #13- It is not anticipated the proposed use would generate excessive noise, vibration, glare, heat, smoke, fumes, or other odors because the proposed use is residential and will not contribute any impacts other than those associated with normal residential activities.

v. Inappropriate hours of operation

As the proposed use is a family hardship dwelling, much like a normal single family residence, there are no proposed hours of operation. The proposed use is residential, not commercial.

Finding #14- There are no inappropriate hours of operation because the use is residential and will be utilized in a manner similar to a single family home.

V. SUMMARY OF FINDINGS

Finding #1- The subject property contains adequate usable space because there is a total of 10 acres, the additional dwelling will be located near the middle of the property, the dwelling will meet applicable setbacks, and the temporary use will be removed in compliance with the definition of family hardship dwelling.

Finding #2- There is adequate access for the proposed use because the subject property is located off of a private road which accesses Lodgepole Road, maintained by the Montana Department of Transportation.

Finding #3- The proposed dwelling will not impact the environment because the portion of the subject property to be utilized does not contain any areas with steep slopes, wetlands, or floodplains.

Finding #4- There is adequate parking for the proposed use because 2 additional parking spaces will be provided for the additional structure based on the residential parking requirements of the Flathead County Zoning Regulations.

Finding #5- Traffic circulation is satisfactory because the subject property is accessed by a private gravel road, which intersects a paved Montana state secondary, and there is adequate space for vehicles to turn around at the end of the private road or within the boundaries of the subject property.

Finding #6- There is adequate open space for the proposed use because the applicant can meet the permitted lot coverage allowed for the AG-40 zoning, as the property consists of approximately 10 acres.

Finding #7- The proposed dwelling is not anticipated to impact surrounding properties because there is an existing wooden fencing located on the subject property, the property is currently forested with mature trees, and no signage is proposed other than normal residential signage.

Finding #8- The proposed lighting is acceptable because all lighting shall comply with the residential lighting requirements located in the Flathead County Zoning Regulations.

Finding #9- The subject property must be re-reviewed for sewer, water, and stormwater drainage under the Sanitation in Subdivision Act for the proposed family hardship dwelling because comment was received from the Flathead County Department of Environmental Health indicating the property is currently approved for only one single family dwelling, the existing water supply must either be reviewed as a multiple user system or a new well must be drilled, and performance standards listed in Section 4.11 of the Flathead County Zoning Regulations state the structure must be connected to an approved septic system.

Finding #10- The proposed use is not anticipated to impact public services as fire and police protection are available to the subject property, and the departments are equipped to handle the addition of one residential structure.

Finding #11- The subject property has adequate access for the proposed use because it is located on a privately maintained gravel road accessed from a Montana state secondary, the private road is located within a 25 foot wide easement, and the temporary addition of 1 single family dwelling would not violate any road user's agreement as staff was not able to establish the existence of any maintenance documents.

Finding #12- It is not anticipated that the proposed use would have a negative impact on the road and surrounding properties because the number of vehicle trips per day would only increase by 10 trips.

Finding #13- It is not anticipated the proposed use would generate excessive noise, vibration, glare, heat, smoke, fumes, or other odors because the proposed use is residential and will not contribute any impacts other than those associated with normal residential activities.

Finding #14- There are no inappropriate hours of operation because the use is residential and will be utilized in a manner similar to a single family home.

VI. RECOMMENDATION

Upon review of this application, the request for a family hardship dwelling on the subject property is supported by the review criteria and all 14 Findings of Fact listed above. Staff therefore recommends that the Flathead County Board of Adjustment adopt staff report FCU-10-15 as findings of fact and approve the conditional use permit, subject to the following 8 conditions:

VII. CONDITIONS

1. The proposed family hardship dwelling shall be in substantial conformance with the original application and site plan submitted and approved by the Board of Adjustment.
2. The family hardship dwelling shall be used solely for the purpose defined in Section 7.05.110 of the Flathead County Zoning Regulations. The family hardship dwelling shall not be rented, leased or occupied by anyone other than the person(s) identified in the application.
3. As the applicants have indicated the existing residence will eventually be removed from the property, the proposed family hardship dwelling will be considered the principal structure onsite, and therefore required to comply with all applicable bulk and dimensional requirements regarding principal structures within the AG-40 zoning.
4. The applicant shall provide 2 parking spaces for the family hardship dwelling as required under Section 6.02.010 of the Flathead County Zoning Regulations.
5. All proposed lighting on the family hardship dwelling shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.
6. The applicant shall obtain an updated septic permit applicable to the family hardship dwelling from the Flathead County Department of Environmental Health. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
7. This permit is valid for a period of one-year from the date of authorization. The permit is subject to renewal by the Zoning Administrator upon the presentation of evidence of continued need, in accordance with Section 4.11.010 of the Flathead

County Zoning Regulations. If a renewal request is not received by this office within the one year timeframe allotted, this permit will expire.

8. Upon expiration of this permit, the existing residence shall be removed from the property within 90 days, as required by Section 4.11.010 of the Flathead County Zoning Regulations, and the proposed family hardship dwelling constructed as a result of this permit shall remain as the primary single family residential dwelling on the subject property as allowed under AG-40 zoning.